Funding US Military Operations

Major Karl Kuhn

THE PAST YEAR

- ENDURING FREEDOM
- IRAQI FREEDOM
- Homeland Defense
- Training and Equipping Foreign Forces

THE SPECTRUM OF CURRENT OPERATIONS

- War -- Global War on Terrorism
- Peacekeeping Ops -- Thing of the past?
- Counter-Drug Missions, Humanitarian and Civic Assistance, Foreign Disaster Relief -- still around
- Security Assistance, Foreign Aid, Training Foreign Forces -- new face

TAKE AWAY POINTS!

- **Constitutional and Statutory Context**
- **Tool Kit of Authorities**

Road Map

Part 1: Background

Part 2: Support to allies

Part 3: Humanitarian operations

Part 4: Military cooperative authorities

Part 5: Special authorities

Part 1
Background

ROLE OF THE LAWYER AND COMPTROLLER

- Determine the Commander's Intent
- Define the Mission (from all perspectives)
- **Identify Funding (Constraints & Resources)**
- Marry up Funds with Underlying Authority
- ID an Authority (or 2) for Specific Missions & ID Available Funds
- Seek Approval from Higher HQ, where necessary

Purpose: The Big Picture

The State Dept has primary responsibility, authority, & funding to conduct foreign assistance on behalf of the US govt

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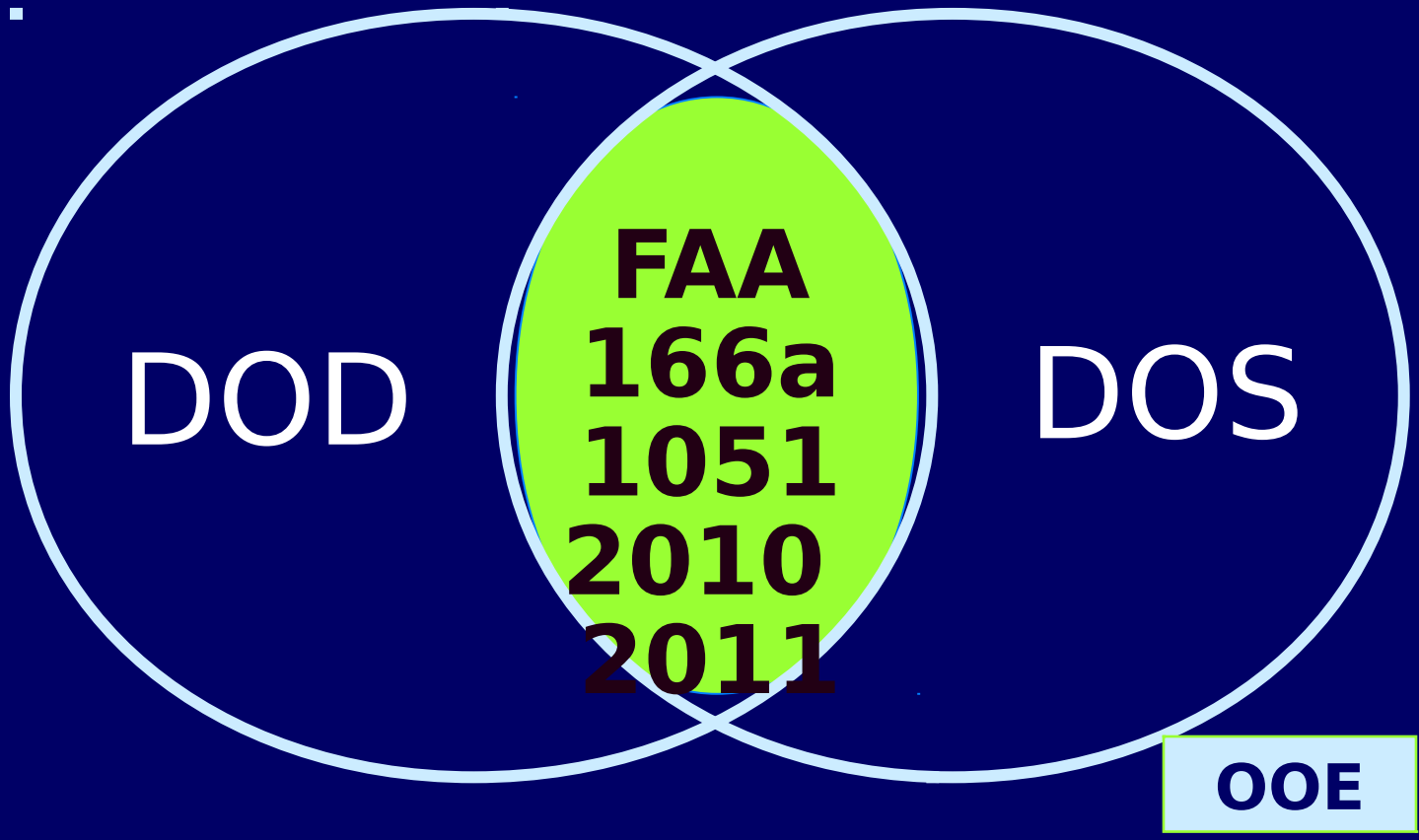
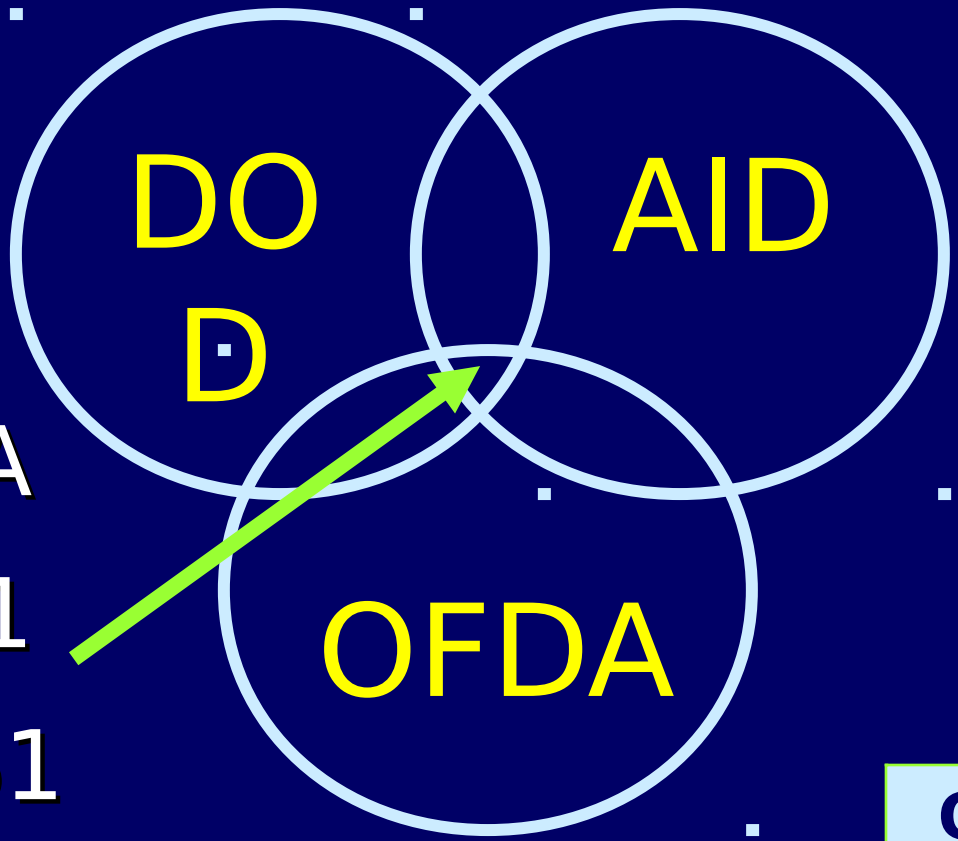
Role Overlap ?

(Foreign Assistance)



Role Overlap?
(Disaster Relief / HA)



FAA

401

2561

OHDACA

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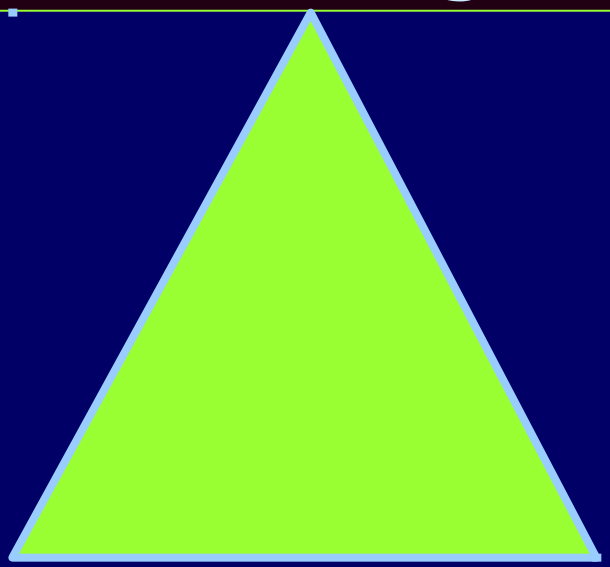
Operational Funding Triangle



Authority

Available Funding

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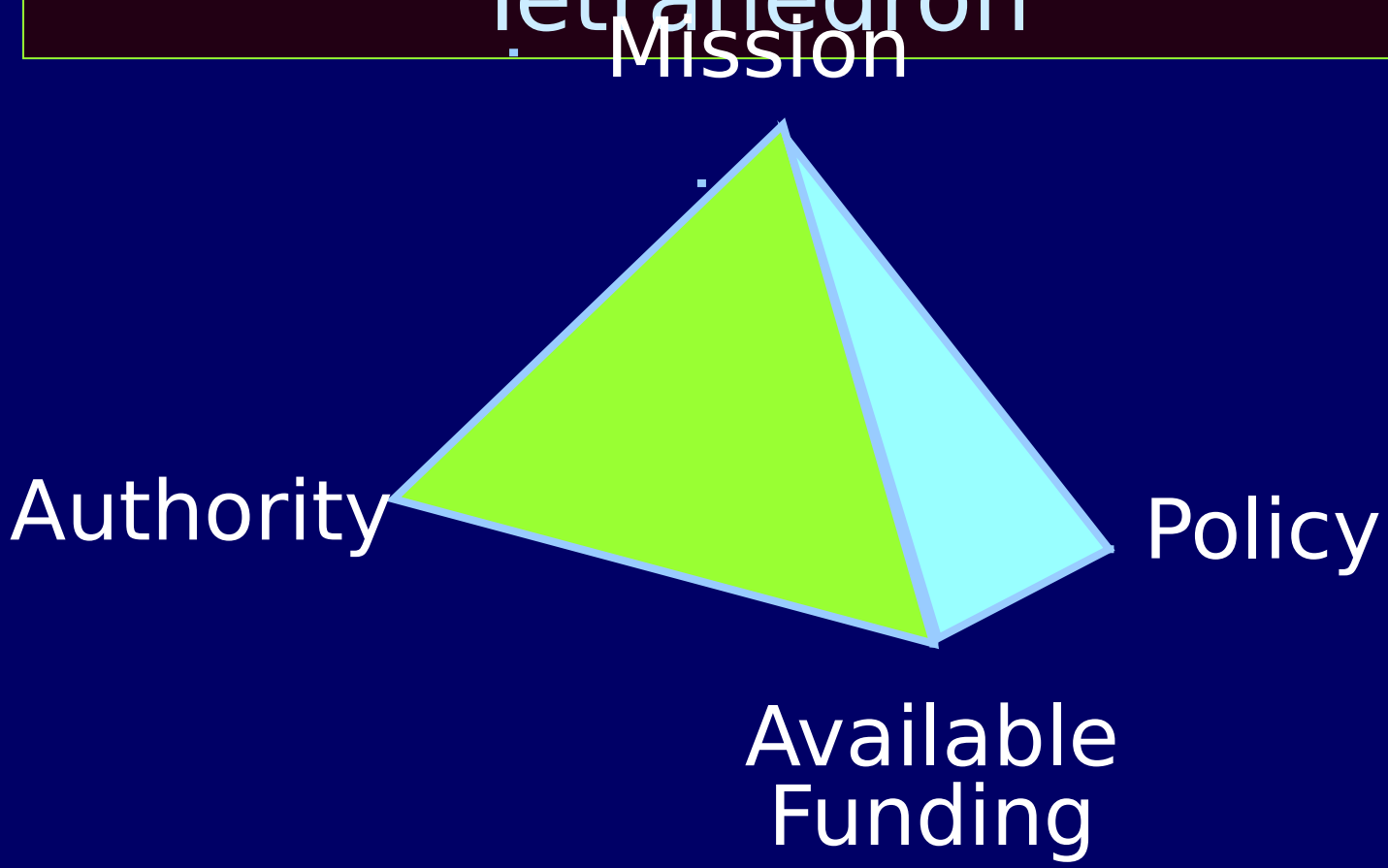
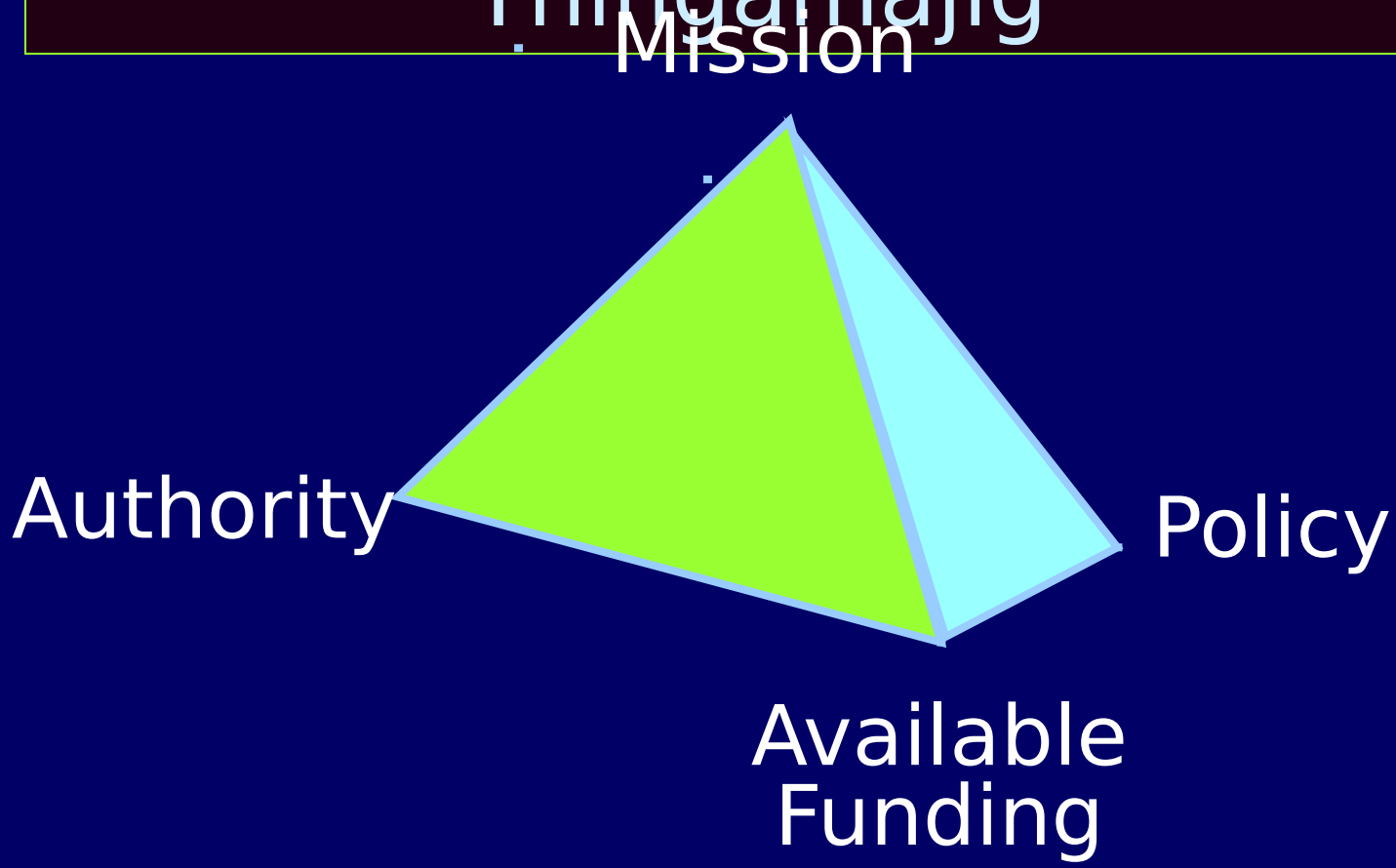
Operational Funding Tetrahedron



Operational Funding Thingamajig



FY04 Defense Appropriations Act Section 8077

N ct may be used to support any training program involving a unit of the security forces of a foreign country if the [SECDEF] has received credible information from the [DoS] that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

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FY 99 Defense Appropriations Act
Section 8115

None of the funds appropriated . . . under this Act may be obligated or expended for any additional deployment of forces of the Armed Forces of the US to Yugoslavia, Albania, or Macedonia unless or until the President . . . transmits to Congress a report on the deployment . . .

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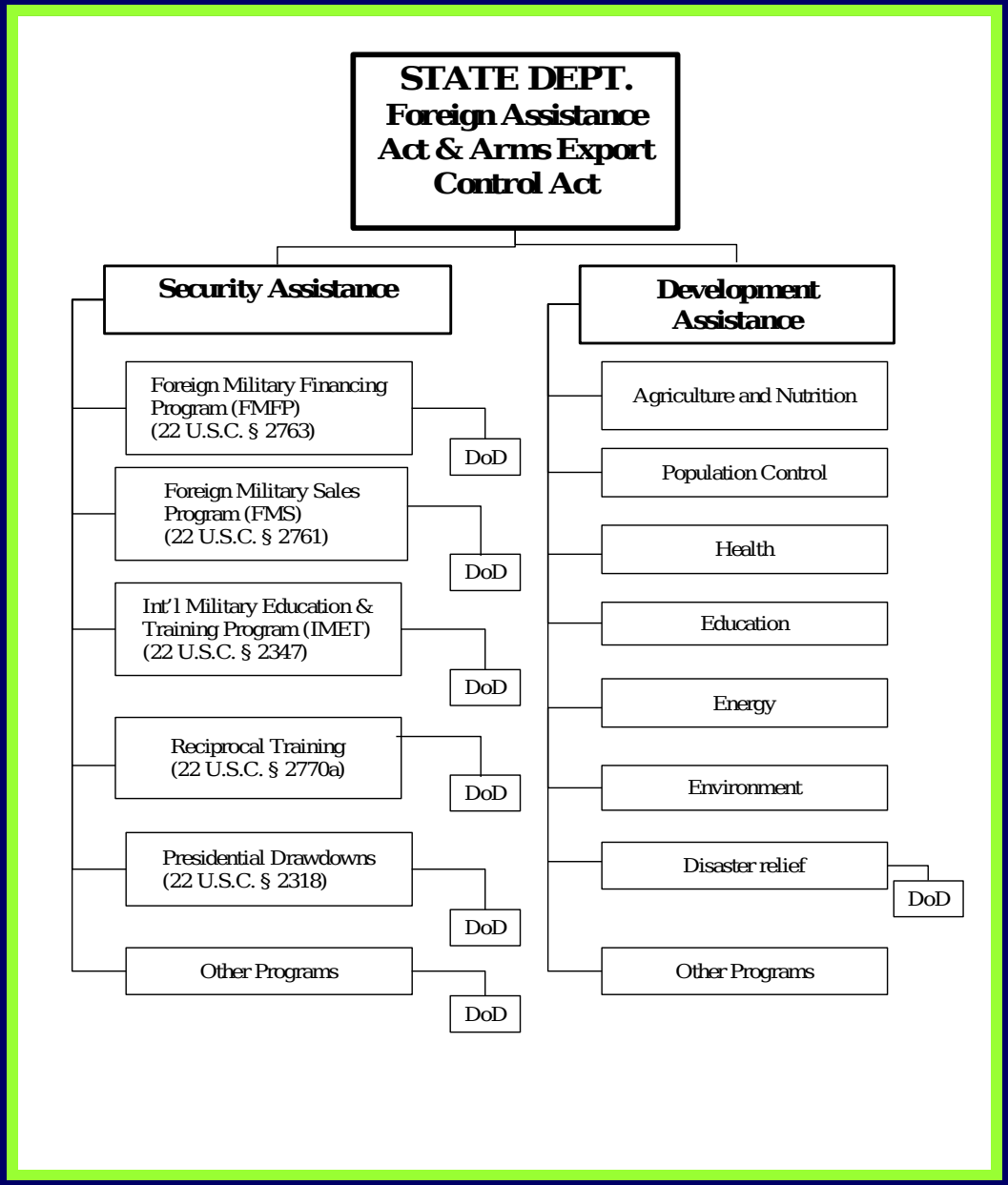
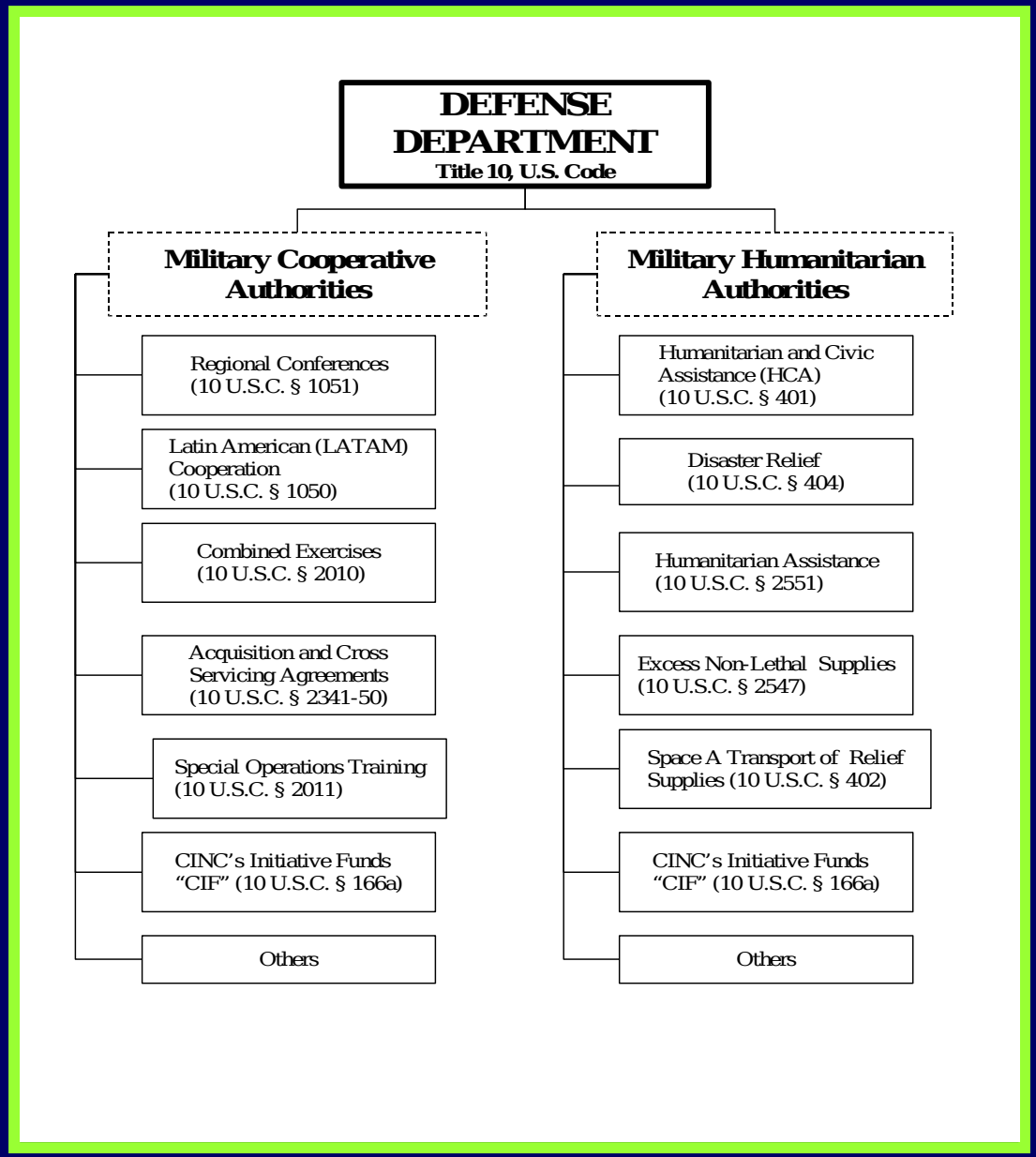

STATE DEPT.
Foreign Assistance Act & Arms Export Control Act
Security Assistance
Development Assistance
Foreign Military Financing Program (FMFP) (22 U.S.C. § 2763)
DoD
Foreign Military Sales Program (FMS) (22 U.S.C. § 2761)
DoD
Int'l Military Education & Training Program (IMET) (22 U.S.C. § 2347)
DoD
Reciprocal Training (22 U.S.C. § 2770a)
DoD
Presidential Drawdowns (22 U.S.C. § 2318)
DoD
Other Programs
DoD
Agriculture and Nutrition
Population Control
Health
Education
Energy
Environment
Disaster relief
DoD
Other Programs


DEFENSE DEPARTMENT
Title 10, U.S. Code
Military Cooperative Authorities
Regional Conferences (10 U.S.C. § 1051)
Latin American (LATAM) Cooperation (10 U.S.C. § 1050)
Combined Exercises (10 U.S.C. § 2010)
Acquisition and Cross Servicing Agreements (10 U.S.C. § 2341-50)
Special Operations Training (10 U.S.C. § 2011)
CINC's Initiative Funds "CIF" (10 U.S.C. § 166a)
Others
Military Humanitarian Authorities
Humanitarian and Civic Assistance (HCA) (10 U.S.C. § 401)
Disaster Relief (10 U.S.C. § 404)
Humanitarian Assistance (10 U.S.C. § 2551)
Excess Non-Lethal Supplies (10 U.S.C. § 2547)
Space A Transport of Relief Supplies (10 U.S.C. § 402)
CINC's Initiative Funds "CIF" (10 U.S.C. § 166a)
Others

General Prohibition on DoD Funding
Foreign Military Training

Foreign Military Training

should be specifically authorized

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General Prohibition on DoD Funding Foreign Military Training

Normal Security Assistance through DoS / FAA

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General Prohibition on DoD Funding Foreign Military Training

1984 / 6 GAO

Honduras Opinions

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General Prohibition on DoD Funding Foreign Military Training

Familiarization Training

is not

Security Assistance Training

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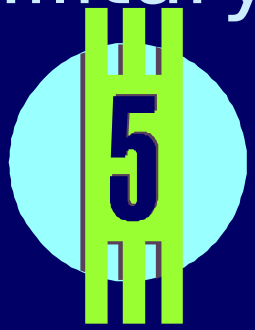
General Prohibition on DoD Funding
Foreign Military Training



Primary Purpose / Incidental Benefit Exception

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Hon. BILL ALEXANDER

B-213137, JUNE 22, 1984, 63 COMP. GEN. 422

The training consisted of

"artillery, infantry, & medical training to hundreds of Honduran military personnel..."

CG Pg 5

Hon. BILL ALEXANDER

B-213137, JUNE 22, 1984, 63 COMP. GEN. 422

"Training provided to Honduran troops during the exercise, although certainly related to exercise activities, was essentially the same as that ordinarily provided through security assistance, & consequently should have been funded as such..."

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DoD's Specific Role in Foreign Assistance: Military Support & Cooperative Activities

- Supporting Multilateral Operations (usually Reimbursable Logistical Support)

- Contacts & Exercises with Foreign Militaries aka Military Cooperative Authorities (training with Foreign Forces)

Part 2

Support to Allies in Multilateral Ops

Support to Allies in Multilateral Ops

1. Drawdowns
2. Foreign Assistance Act § 607 & 632
3. Foreign Military Sales
4. ACSA

Drawdown Authority

Foreign Assistance Act of 1961

(22 U.S.C. 2318 & 2348a)

Pg 4

Drawdown Authority: 506 (a) (1)

- Articles from DoD stocks, services, & training
- For unforeseen emergencies requiring immediate assistance
- Requires Presidential Determination (PD) & prior Congressional Notification (CN)
- $100M limit per year

Drawdown Authority: 506 (a) (2)

- Articles from USG stocks, services, & training
- For counternarcotics, disaster relief, migration & refugee assistance, antiterrorism & non-proliferation assistance

Drawdown Authority: 506 (a) (2)

- Requires Presidential Determination (PD) & 15-day prior Congressional Notification (CN)
- $200M limit per year (no more than $75M from DoD)

Pg 5

Drawdown Authority: 552 (c) (2)

- Articles from USG stocks, services, & training
- To support peacekeeping
- Requires Presidential Determination (PD) & ? prior Congressional Notification (CN)
- $25M limit per year

Pg 5

Drawdown Authority: Afghanistan Freedom Support Act (22 USC 7532)

- Defense Articles, Services, & Military Education and Training
- Through Sec. 506 of FAA
- Requires Presidential Determination (PD) & prior Congressional Notification (CN)
- Up to $300M

Pg 5

Drawdown Authority: Afghanistan Freedom Support Act

- Authority to Acquire by Contract
- Available to Eligible Countries & Intn'l Organizations
- $165M Reimbursement Sec. 1307 FY03 EWSA

Pg 5

Drawdown Authority:
Iraq Liberation Act of 1998

- Defense Articles, Services, & Military Education and Training
- Iraqi Democratic Opposition Organizations
- Requires Presidential Determination (PD) & prior Congressional Notification (CN)
- Up to $97M

Pg 5

Drawdown Authority:
Iraq Liberation Act of 1998

- $92M Assistance 23 Dec 2002
- $63.5M Reimbursement Sec. 1309 FY03 EWSA

Pg 5

DRAWDOWNS ARE BIG BUSINESS!

- From 1980 to 1992
  - 22 Drawdowns Executed
  - Value -- $563M
- Since 1992:
  - Over 45 Drawdowns Executed
  - Value -- about $1.2B

DRAWDOWNS
WHAT THEY'RE NOT

- Not excess goods and services
- Not new funds/money
- Not part of 90's down-sizing
- Not managed by JS -- managed by DSCA

Reimbursable Support
FAA § 607, 22 U.S.C. § 2357

Any federal agency may furnish commodities & services to friendly countries & international organizations, for PKO & disaster relief purposes, on an advance-of-funds or reimbursable basis

FAA § 607, 22 U.S.C. § 2357

Presidential determination required;
determination authority delegated to Sec State & Administrator, AID

FAA § 607, 22 U.S.C. § 2357

Support of UN operation requires negotiation & conclusion of separate “607” agreement (*e.g.* Somalia, Haiti)

FAA § 607, 22 U.S.C. § 2357

Reimbursement required, no waiver permitted

Other Reimbursable Support: FAA § 632, 22 U.S.C. 2392

Authorizes the State Dept to use its funds to obtain DoD's support under the FAA or Title 10 authorities

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Other Reimbursable Support: Economy Act, 31 U.S.C. § 1535

Authorizes the provision of defense articles & services *indirectly* to third countries, the UN, & international organizations on a *reimbursable* basis for another federal agency (*e.g.,* Dept of State)

Foreign Military Sales / Foreign Military Financing

- Dept of State Program
- Administered thru Defense Security and Cooperation Agency (DSCA)
  - Army Contact is AMC's USASAC (Security Assistance Command)
- Office of Military Cooperation – Afghanistan (OMC-A)

Pg 8

Acquisition & Cross Servicing Agreements: ACSA Authorities

- Statutory authority (10 USC §2341-2350) to DoD permitting simplified procedures for the acquisition and transfer of logistic support, supplies, and services (LSSS) by U.S. Forces
- DoD Dir 2010.9 (28 April 2003)
- DoD Dir 5530.3 (11 June 1987) International Agreements

Acquisition & Cross Servicing Agreements: ACSA Authorities

Special grant of Congressional authority

Transactions must occur at govt to govt level (i.e., international agreement & organized bureaucracy)

Pg 8

ACSA STATISTICS

- 72 ACSAs currently exist (23 countries eight years ago)
- 10 ACSAs are pending signature (including Afghanistan)
- Negotiating ACSAs with 8 other countries
- 18 countries are currently ACSA eligible

Acquisition & Cross Servicing Agreements: ACSA Authorities

- Acquisitions not governed by FAR contracting procedures

- Transfers outside of AECA / FAA channels

Pg 8

ACSA Considerations & Procedures

- Financial considerations
  - Pricing ACSA transactions -- reciprocal pricing principles
  - Methods of payment (PIC, RIK, & EVE)
- Congressional limitations & controls
  - Limited definition of LSSS

ACSA METHODS OF PAYMENTS

1. Cash
2. Replacement-in-Kind: receiving nation replaces supplies or services with substantially identical supplies or services
3. Equal-value-exchange: replacement by the receiving nation of supplies or service with supplies or services of an equal value

Considerations & Procedures: Applicable Items

- Food & water
- Transportation & POL
- Clothing
- Medical services

Considerations & Procedures: Applicable Items

- Use of facilities & billeting
- Communication services
- Storage services
- Repair & maintenance

Considerations & Procedures: Prohibited Items

- Weapon systems; major end Items
- Guided missiles; naval mines & torpedoes
- Chemical munitions
- Chaff & Chaff Dispenser

Part 3
Humanitarian Operations

Humanitarian Assistance By US Military Forces

- Humanitarian & Civic Assistance (“HCA”)
- Humanitarian Demining (“HD”)
- Transportation of relief supplies
- Excess equipment
- Humanitarian Assistance (“HA”)
- Humanitarian & Civil Assistance (“CIF”)
- Commander’s Emergency Response Program (CERP)

Pg 8-14

BILL
ALEXANDER
Guatema
la
Honduras
El
Salvado
r
Nicaragua

Honorable Bill Alexander
B-213137, June 22, 1984, 63 COMP. GEN. 422

DOD has no separate authority to conduct civic action or humanitarian assistance activities, except on behalf of other federal agencies (such as aid) through the economy ACT,

31 U.S.C. 1535

Pg 9

Honorable Bill Alexander
B-213137, June 22, 1984, 63 COMP. GEN. 422

Such activities conducted in Honduras during the course of Ahuas Tara II were improperly charged to DOD'S O&M appropriations.

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Funding DoD Humanitarian Activities

Humanitarian Assistance (HA) & Humanitarian and Civic Assistance (HCA)

OHDACA Funds

- **Human. Assist. Other HAO 2561**
- **Human. Assist. Prog. Excess Prop. HAP EP 2557**
- **Human. De-mining 401**

O & M

- **Pre-Planned Human. And Civic Assist. HCA 401**
- **De Minimis Human. And Civic Assist. HCA 401**

Funding DoD Humanitarian Activities:
O&M – Sec 8009, P.L. 107 - 248
10 USC § 401 Appropriation:

“Budgeted”

piece of O&M

Pgs 8 & 11

Funding DoD Humanitarian Activities: Overseas Humanitarian, Disaster & Civic Aid (OHDACA)

Title II, P.L. 108-87:

Separate appropriation

FY 04: $59 M

Pg 8

Humanitarian & Civic Assistance: 10 USC § 401, HCA (Three Types)

Preplanned

Demining

De Minimis

Pg 8 - 11

Humanitarian & Civic Assistance: 10 USC § 401, HCA (Three Types)

401 Authority	Funding Source
1 Preplanned --	Budgeted/Service O&M
2 Demining --	OHDACA Funds
3 De Minimis --	Unit O & M

Pg 8 & 11

401 Humanitarian & Civic Assistance: Requirements & Limits

- Only to countries approved by SECDEF
- Must promote the security interests of both US & HN
- Must promote the specific operational skills of the unit involved

Pg 9 ¶2&3

401 Humanitarian & Civic Assistance: Requirements & Limits

- Must serve basic economic & social needs of the people involved
- Must compliment, not duplicate other forms of assistance
- Must not be provided to paramilitary or military units or individuals

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401 Humanitarian & Civic Assistance: Pre-planned & De Minimis Permissible Categories of Work

- Rudimentary surface transportation systems

- Well drilling & basic sanitation facilities

Pg 10

401 Humanitarian & Civic Assistance: Permissible Categories of Work

- Rudimentary construction / repair of public facilities (schools, hospitals)

- Medical & dental readiness exercises

Pg 10

HCA: Funding Source

- HCA Part of O&M Appropriation, not a separate pot of money
- "Unlimited" HCA Funding
  - Defense Appropriation Act § 8009
  - Budgeted & approved prior FY
  - Annual HCA / HA conference

Pg 11 ¶7

De Minimis HCA

- Target of opportunity
- Must be in conjunction with an operation
- O&M & Mil Per funded by unit, not HCA or OHDACA
- Rule of thumb

Pg 10-11

Exercise Related Construction

- 10 USC 2805(a)(2)
- Base Camps, Bridge and Roadway to Base Camp
- UMMC Funded, not HCA, OHDACA, or O&M

Pg 11 ¶6

Humanitarian Relief: 10 USC § 2557, Excess Supplies

- Excess; non-lethal, non-real property humanitarian supplies
- Transfer to DoS; no authority to transfer to HN

Pg 11-12

Humanitarian Assistance ("HA")
10 USC § 2561

- Provide transportation & *other Humanitarian Assistance*

- Funded from ODHACA

Pg 13-14

Humanitarian Assistance ("HA")
§ 401 HCA v. § 2561

- If the project fits under § 401, must use § 401, if not, & its for a humanitarian purpose, it's § 2561 HA

Pg 14

Commander's Emergency Response Program ("CERP") 2 Funding Sources

- Originally Funded with Seized Iraqi Assets - CJTF-7 FRAGO 89
- Reconstruction Assistance
- Approximately $78.6M for >11,000 Projects

OOE-New

Commander's Emergency Response Program ("CERP")
2 Funding Sources

- Now Funded with Appropriated Funds - $180M
- Sec. 1110, FY04 Emergency Supplemental Appropriations Act
- Urgent Humanitarian Relief & Reconstruction Assistance for Iraq & Afghanistan

Part 4

Military Cooperative Authorities

Military Cooperative Activities

- AKA Contacts & Exercises w/ Foreign Militaries
- Authority for activities is Title 10 US Code
- Congress annually appropriates funds to DoD (Defense Appropriation

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Contacts & Exercises with Foreign Militaries

- 10 USC 1051 bilateral conference
- 10 USC 1050 LATAM COOP
- 10 USC 2010 DCCEP
- 10 USC 2011 JCET (SOF)
- 10 USC 168 Mil to Mil
- 10 USC 166a CIF

Pg 14-18

Regional Conferences & Seminars: 10 USC 1051

1. Expenses of defense personnel of developing countries

2. Attendance at regional conferences, seminars, meetings

3. Limited to travel in AOR?

Pg 15

training: 10 USC § 2010 DCCEP *

- Bilateral & multilateral exercise
- Enhance US security interests

* Developing Countries Combined Exercise Program

Pg 16

training: 10 USC § 2010

- Participating country will not play unless US pays incremental expenses
- Funds incremental portion of participating country's costs
  - Rations, fuel, ammo, transportation

Pg 16

training: 10 USC § 2011 JCET

- SOF training exception to FMS
- Expend O&M funds
  - Primary purpose: Train US SOF
  - Funds incremental costs of HN forces participation

Pg 17

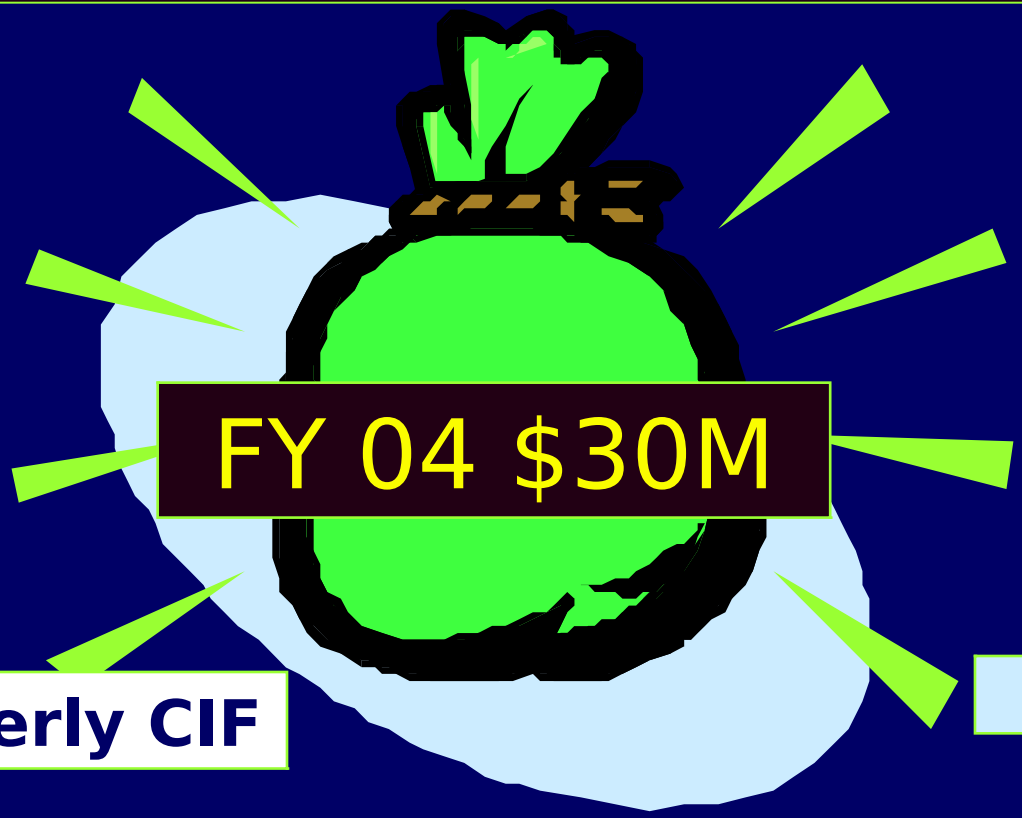
Section 8077: Human Rights Vetting

None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the SECDEF has received credible information from the Dept of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been ta

OOE

Part 5
Special Authorities

Combatant Cdr Initiative Funds (CCIF)* 10 USC 166a



FY 04 $30M

*formerly CIF

Pg 19

Combatant Cdr Initiative Funds (CCIF)

CJCS may provide to CCs amounts appropriated for the following activities:

- Force training (unique or one-time events)
- Contingencies / selected operations
- Command & control
- Joint exercises

Pg 19-20

Combatant Cdr Initiative Funds (CCIF)

CJCS may provide to CCs amounts appropriated for the following activities:

- Humanitarian & civil assistance
- Military education & training to foreign militaries
- Bilateral or regional cooperation programs
- Force protection

Pg 19-20

Emergency & Extraordinary Expenses (EEE)

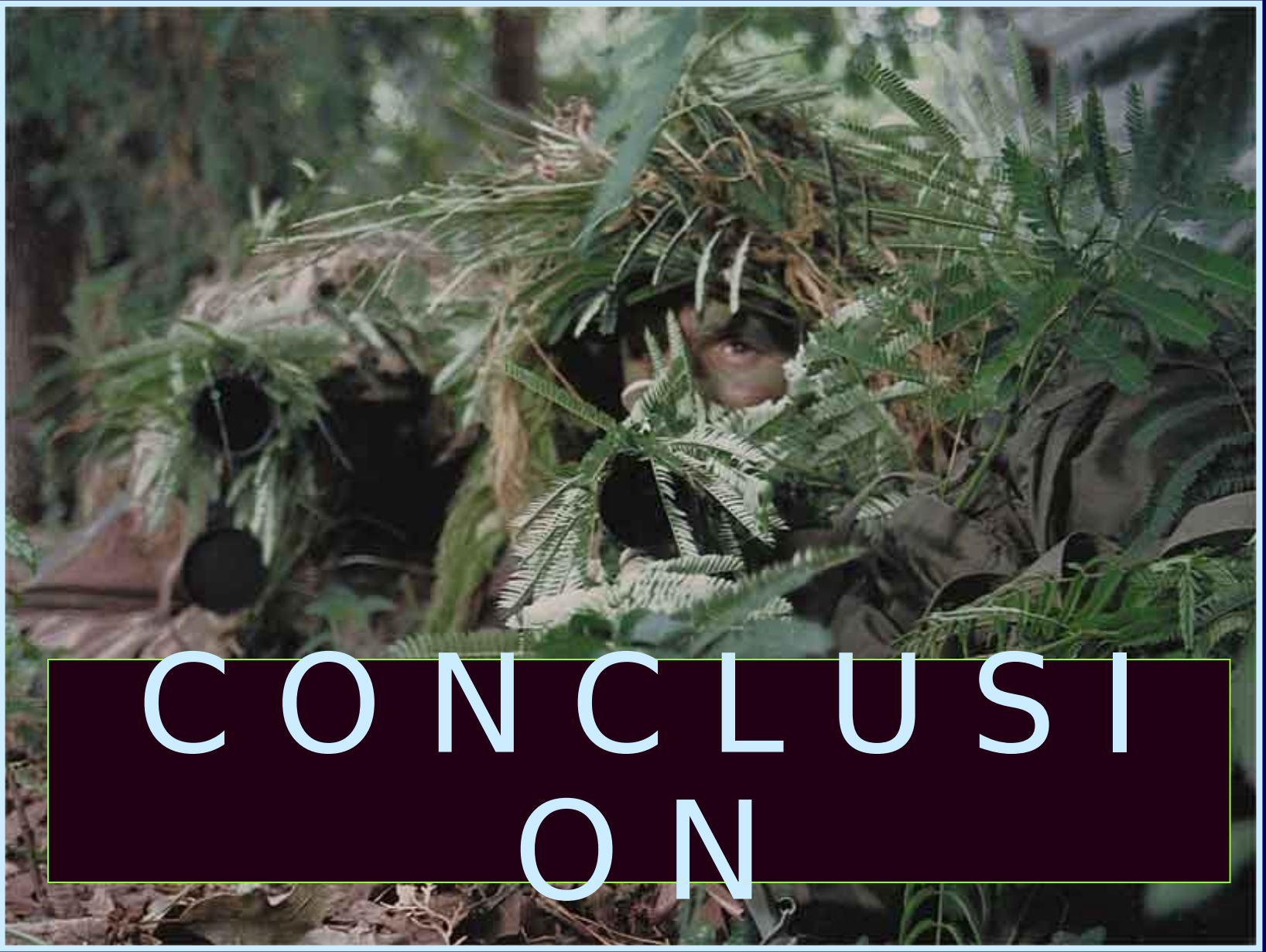
- 10 USC 127 (FY 04 DoD $40M; DA $11M; AF $7.8M; Navy $4.4M)
- Defense Secretary & service secretaries may provide for any emergency or extraordinary expense which cannot b anticipated or classified

Pg 20-21

Emergency & Extraordinary Expenses (EEE)

- Determination is final & conclusive = “Discretionary”
- > $500K Congressional notification requirement with specified waiting periods
- Quarterly report requirement

Pg 20-21


CONCLUSION